



PRESS RELEASE

Attorney General Frosh Joins Coalition Defending Key Provision of Voting Rights Act Before Supreme Court *Coalition Argues That Provision Removes Racial Barriers to Voting Without Infringing State Sovereignty*

BALTIMORE, MD (January 21, 2021) – Maryland Attorney General Brian E. Frosh today joined a coalition of 18 attorneys general urging the Supreme Court to uphold a robust test for applying Section 2 of the Voting Rights Act (VRA), which prohibits policies and practices that deny or diminish citizens’ right to vote based on race. The [amicus brief](#) was filed in *Brnovich v. Democratic National Committee* and *Arizona Republican Party v. Democratic National Committee*, two consolidated cases concerning Arizona laws that challengers allege make it harder to vote. The coalition argues that the courts have developed a workable and searching inquiry into whether state laws actually operate to discriminate against voters of color, and that the Supreme Court should maintain this standard instead of narrowing it or striking down critical voting rights legislation.

“Arizona’s laws discriminate against people of color,” said Attorney General Frosh. “The Voting Rights Act was designed to thwart voter suppression, and these laws have been demonstrated to undermine the voting rights of the very people the VRA was intended to protect.”

Section 2 of the VRA prohibits any “qualification or prerequisite to voting” or “standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.” Since 1982, this has contained a discriminatory-results provision – allowing for election laws or structures to be challenged if they create unequal opportunities for participation in the political process.

Arizona has two laws that have been challenged because of discriminatory results: an “out-of-precinct policy,” under which provisional ballots cast in person are not counted if the voter, even inadvertently, cast the ballot outside their designated precinct; and a “ballot-collection” statute that prohibits so-called ballot harvesting and only allows certain individuals, such as family members, to collect and submit another person’s completed early ballot. The Ninth Circuit concluded that both laws produced a disparate impact on voters of color that created unequal opportunities for political participation, and thus both violated the VRA. The Arizona Attorney General and the Arizona Republican Party are challenging the Ninth Circuit’s ruling on statutory and constitutional grounds in the Supreme Court, joined by Republican state attorneys general. Those challenging the ruling argue that it works to effectively strike down all laws that impose even small differential effects on voters of different races.

The 18-attorney general coalition supporting the ruling filed a brief defending the existing test for assessing violations to the VRA. Specifically, the states urge the Supreme Court to uphold the Ninth Circuit's decision because:

- **Generally applicable election laws like Arizona's can violate Section 2 of the VRA:** Previous cases have demonstrated that seemingly "neutral, generally applicable election laws" can result in denial or abridgment of the vote to people of color. The Court itself interpreted the text of the VRA to provide the broadest possible scope, extending to facially neutral and generally applicable laws.
- **The existing test incorporates a rigorous analysis that only threatens election laws that actually operate to abridge or deny electoral opportunities:** The Ninth Circuit's test – similarly used by other courts – takes disparate impact as a starting point before engaging in a more searching inquiry into whether electoral systems actually function to exclude minority voters. Finding a mere disproportionate effect is not enough to strike down a law. Instead, the plaintiff must demonstrate that in light of the particular conditions in the jurisdiction at issue, the disparate burden actually denies voters of color equal opportunities to participate in the electoral process. This rigorous analysis provides an administrable framework that gives states flexibility while preventing discrimination.
- **The two-part test is constitutional because it prevents and deters lawmakers from enacting discriminatory laws:** Petitioners and their amici argue that a robust Section 2 results test would be unconstitutional because Congress can only address intentional discrimination. In the brief, the states rebut this argument by demonstrating that the results test helps weed out intentional discrimination that is otherwise difficult to prove. Even when a law is not motivated by covert discriminatory intent, the test prevents *future* unconstitutional conduct by targeting the racially polarized conditions most likely to incentivize intentional discrimination in the regulation of elections.

Joining Maryland in the brief are the attorneys general from California, Colorado, Connecticut, the District of Columbia, Hawaii, Illinois, Maine, Massachusetts, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington.